

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DANA L. RICE-SMITH,	:	CIVIL ACTION NO. 1:20-CV-1473
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
MISERICORDIA CONVALESCENT	:	
HOME, d/b/a MISERICORDIA	:	
NURSING & REHABILITATION	:	
CENTER,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 6th day of January, 2021, upon consideration of the report (Doc. 22) of Magistrate Judge Martin C. Carlson, recommending that the court grant defendant’s motion to dismiss Count I of plaintiff’s complaint for failure to state a claim upon which relief may be granted, (see id. at 8-11), but that the court grant plaintiff leave to amend to cure the factual deficiencies identified in her pleading, (see id. at 11), and it appearing that plaintiff has not objected to the report, see FED. R. Civ. P. 72(b)(2), and in fact has filed an amended pleading as suggested by Judge Carlson, (see Doc. 23), and the court noting that failure of a party to timely object to a magistrate judge’s conclusions “may result in forfeiture of *de novo* review at the district court level,” Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (citing Henderson v. Carlson, 812 F.2d 874, 878-79 (3d Cir. 1987)), but that, as a matter of good practice, a district court should afford “reasoned consideration” to the uncontested portions of the report, E.E.O.C. v. City of Long Branch, 866 F.3d 93, 100 (3d Cir. 2017) (quoting Henderson, 812 F.2d at 879), in order to “satisfy itself that

there is no clear error on the face of the record,” FED. R. CIV. P. 72(b), advisory committee notes, and, following an independent review of the record, the court being in agreement with Judge Carlson’s recommendation, and concluding that there is no clear error on the face of the record, it is hereby ORDERED that:

1. The report (Doc. 22) of Magistrate Judge Carlson is ADOPTED.
2. Defendant’s motion (Doc. 12) to dismiss Count I is GRANTED.
3. Count I of plaintiff’s complaint is DISMISSED without prejudice and with leave to amend.
4. Plaintiff’s amended complaint (Doc. 23) is accepted in accordance with paragraph 3 above.
5. Defendant shall respond to plaintiff’s amended complaint (Doc. 23) in accordance with the Federal Rules of Civil Procedure.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner
United States District Judge
Middle District of Pennsylvania